

Assembly Bill No. 708

Passed the Assembly September 3, 2009

Chief Clerk of the Assembly

Passed the Senate September 1, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 12012 and 12157 of, and to repeal and add Sections 12013 and 12154 of, the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 708, Huffman. Fish and wildlife: poaching.

Existing law regulates the taking or possession of birds, mammals, fish, amphibians, and reptiles. Except as expressly provided otherwise in the Fish and Game Code, any violation of that code, or of any rule, regulation, or order made or adopted under that code, is a misdemeanor. Existing law specifically imposes a fine of up to \$30,000 or up to one year of imprisonment, or both, for the knowing unlawful taking of listed animals for commercial purposes, for the knowing unlawful possession for commercial purposes of any part of a mountain lion, bear, wild pig, bighorn sheep, elk, antelope, or deer, a pelt of a furbearing mammal, a live reptile or amphibian, any fully protected, threatened, or endangered species, or any quantity of fish or shellfish in excess of the quantity permitted by the code, and for the knowing unlawful sale for commercial purposes, or the unlawful possession with the intent to sell, of any part of, or product made from, any wildlife. Existing law, except as specified, also prohibits any person convicted of a violation punishable under those unlawful taking and possession and sale provisions from thereafter taking wildlife in this state for a period of not less than one year from the date of conviction, and provides for the revocation of related entitlements. Existing law prohibits a person, upon the 3rd conviction of a specified violation relating to the taking or possession of fish, reptiles, or amphibia, or parts thereof, in any 5-year period, and upon any subsequent conviction during a 5-year period, from taking any fish, reptiles, or amphibia in the state for 3 years from the date of the last conviction, and requires the Fish and Game Commission to revoke the sport fishing license of such a person for the period of the prohibition.

This bill would delete those unlawful taking and possession and sale provisions and those specific taking and entitlement

prohibitions. The bill would, instead, except as specified, provide that any person who illegally takes, possesses, imports, exports, sells, purchases, barter, trades, or exchanges any amphibian, bird, fish, mammal, or reptile, or part thereof, for profit or personal gain, is guilty of a misdemeanor punishable by a fine of not less than \$5,000, nor more than \$40,000, or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. The bill would increase the fine for a 2nd or subsequent violation. The bill would require that moneys equivalent to 50% of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to these provisions be allocated for the support of the Special Operations Unit of the Department of Fish and Game and used for law enforcement purposes and 50% of the revenue from a fine be paid to the county in which the offense was committed. The bill would require the county board of supervisors to first use those revenues to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation and would authorize the expenditure of any excess revenues in accordance with specified existing law.

The bill would provide that any person who illegally takes or possesses in the field more than 3 times the daily bag limit, or who illegally possesses more than 3 times the legal possession limit, of fish, reptiles, birds, amphibians, or mammals is guilty of a misdemeanor subject to a fine of not less than \$5,000 nor more than \$40,000, or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. The bill would increase the fine for a 2nd or subsequent violation. The bill, except as specified, would provide that any person who maliciously and intentionally maims, mutilates, or physically tortures any fish, reptile, bird, amphibian, or mammal provided for in the code is guilty of a crime punishable as prescribed. The bill would require that 50% of the revenue from a fine collected pursuant to these provisions be paid to the county in which the offense was committed. The bill would require the county board of supervisors to first use those revenues to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation and would authorize the expenditure of any excess revenues in accordance with specified existing law.

The bill would authorize the department, upon a conviction of certain violations, to suspend or permanently revoke a person's hunting or sport fishing license or permit privileges. The bill would authorize any person whose privileges are suspended or revoked to appeal the suspension or revocation to the commission, and would require the commission to initiate the appeal process within 12 months of the violator's appeal request. The bill would authorize the department to adopt regulations to implement those suspension and revocation provisions. The bill would authorize the forfeiture of any device or apparatus, including a vessel, vehicle, or hunting or fishing gear, used in the commission of specified offenses.

The bill, by creating new crimes, would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The illegal poaching of fish and wildlife, including the egregious killing of migratory birds, deer, bear, fish, and abalone, poses a serious threat to California's wildlife species and biodiversity.

(b) Arrests and reported incidents of poaching have increased dramatically in California in recent years. Between 2003 and 2007 the number of violations more than doubled, increasing from approximately 6,500 hunting violations and approximately 8,000 fishing violations in 2003 to approximately 17,800 hunting violations and approximately 15,900 fishing violations in 2007. Illegal poaching of waterfowl in particular has reached the highest level in decades.

(c) Current penalties and enforcement levels have proved insufficient to serve as an effective deterrent for illegal poachers. Financial resources dedicated to enforcement of hunting and fishing

laws have also declined significantly at the same time that poaching and profits from poaching have soared.

(d) California in 2008 had less than 300 fish and game wardens on active duty to patrol the entire state, which includes thousands of miles of coastline and hundreds of thousands of acres of public lands.

(e) The economic impact of illegal poaching diminishes the significant public investment the state and law abiding fishers and hunters have made in restoring habitat for fish and wildlife and protecting biodiversity.

(f) California's fish and wildlife are held in trust for the common good of all the people of California.

(g) It is therefore the intent of the Legislature that existing laws prohibiting illegal poaching be enforced, that sufficient resources be dedicated for effective enforcement of those laws, and that the penalties for illegal poaching be enhanced, including, in particular, the penalties for egregious poaching violations exhibiting a wanton disregard for the laws protecting fish and wildlife and the public trust purposes of those resources.

SEC. 2. Section 12012 of the Fish and Game Code is amended to read:

12012. (a) Any person who illegally takes, possesses, imports, exports, sells, purchases, barter, trades, or exchanges any amphibian, bird, fish, mammal, or reptile, or part thereof, for profit or personal gain is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) If a person is convicted of a second or subsequent violation of subdivision (a), that person shall be punished by a fine of not less than ten thousand dollars (\$10,000), nor more than fifty thousand dollars (\$50,000), or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(c) If a second or subsequent violation of subdivision (a) also involves a violation of Section 8685.5, 8685.6, 8685.7, or 8688 that is punishable by subdivision (b) of Section 12004, the offense shall be punishable by a fine of not more than fifty thousand dollars (\$50,000), or by imprisonment pursuant to subdivision (b) of Section 12004, or by both that fine and imprisonment.

(d) Notwithstanding Section 802 of the Penal Code, prosecution of an offense punishable under this section shall be commenced within three years after commission of the offense.

(e) This section does not apply to fish taken pursuant to a commercial fishing license issued pursuant to Section 7852, or fish sold pursuant to a commercial fish business license issued in accordance with Article 7 (commencing with Section 8030) of Chapter 1 of Part 3 of Division 6.

(f) This section does not supersede Section 12005 or 12009.

(g) (1) Moneys equivalent to 50 percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the department, and used for law enforcement purposes.

(2) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 13003. The board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 13103.

SEC. 3. Section 12013 of the Fish and Game Code is repealed.

SEC. 4. Section 12013 is added to the Fish and Game Code, to read:

12013. (a) Any person who illegally takes or possesses in the field more than three times the daily bag limit, or who illegally possesses more than three times the legal possession limit, of fish, reptiles, birds, amphibians, or mammals is guilty of a misdemeanor and shall be subject to a fine of not less than five thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) If a person is convicted of a second or subsequent violation of subdivision (a), that person shall be punished by a fine of not less than ten thousand dollars (\$10,000), nor more than fifty thousand dollars (\$50,000), or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(c) Any person who maliciously and intentionally maims, mutilates, or physically tortures any fish, reptile, bird, amphibian,

or mammal provided for in this code is guilty of a crime punishable in accordance with subdivision (a). Nothing in this subdivision affects any legal activity pursuant to this code, including, but not limited to, hunting, fishing, trapping, hunting dog training, hunting dog field trials, predation control, and efforts to dispatch a wounded mammal, birds or fish taken legally.

(d) Nothing in this section prohibits a person from giving, receiving, or possessing the legal possession limit of lawfully taken fish, reptiles, birds, amphibians, or mammals.

(e) Nothing in this section prohibits a person from giving, receiving, or possessing, at the personal abode of the donor or donee, lawfully taken migratory game birds that are not required to be tagged pursuant to the federal Migratory Bird Treaty Act (16 U.S.C. Sec.703 et seq.) or regulations adopted pursuant to that act.

(f) This section does not supersede Section 12005, 12006.6, or 12009.

(g) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 13003. The board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 13103.

SEC. 5. Section 12154 of the Fish and Game Code is repealed.

SEC. 6. Section 12154 is added to the Fish and Game Code, to read:

12154. (a) Upon a conviction of a violation of Section 12012 or 12013, the department may suspend or permanently revoke a person's hunting or sport fishing license or permit privileges. Any person whose privileges are suspended or revoked pursuant to this section may appeal the suspension or revocation to the commission. The commission shall initiate the appeal process within 12 months of the violator's appeal request. The department may adopt regulations to implement this subdivision.

(b) Pursuant to subdivision (c) of Section 12157, a judge may order the seizure or forfeiture of any device or apparatus, including a vessel, vehicle, or hunting or fishing gear, that is used in committing an offense punishable under Section 12012 or 12013.

SEC. 7. Section 12157 of the Fish and Game Code is amended to read:

12157. (a) Except as provided in subdivision (b), the judge before whom any person is tried for a violation of any provision of this code, or regulation adopted pursuant thereto, may, upon the conviction of the person tried, order the forfeiture of any device or apparatus that is designed to be, or is capable of being, used to take birds, mammals, fish, reptiles, or amphibia and that was used in committing the offense charged.

(b) The judge shall, if the offense is punishable under Section 12008 of this code or under subdivision (c) of Section 597 of the Penal Code, order the forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle that is used or intended for use in delivering, importing, or exporting any unlawfully taken, imported, or purchased species.

(c) (1) The judge may, for conviction of a violation of any of the following offenses, order forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle used or intended for use in committing the offense:

(A) Section 2000 relating to deer, elk, antelope, feral pigs, European wild boars, black bears, and brown or cinnamon bears.

(B) Any offense that involves the sale, purchase, or possession of abalone for commercial purposes.

(C) Any offense that involves the sale, purchase, or possession of sturgeon or lobster, pursuant to Section 7370 or 8254.

(D) Any offense that involves a violation of Section 12012.

(E) A violation of subdivision (b) of Section 12013.

(2) In considering an order of forfeiture under this subdivision, the court shall take into consideration the nature, circumstances, extent, and gravity of the prohibited act committed, the degree of culpability of the violator, the property proposed for forfeiture, and other criminal or civil penalties imposed on the violator under other provisions of law for that offense. The court shall impose lesser forfeiture penalties under this subdivision for those acts that have little significant effect upon natural resources or the property of another and greater forfeiture penalties for those acts that may cause serious injury to natural resources or the property of another, as determined by the court. In determining whether or not to order forfeiture of a vehicle, the court shall, in addition to any other relevant factor, consider whether the defendant is the owner of the

vehicle and whether the owner of the vehicle had knowledge of the violation.

(3) It is the intent of the Legislature that forfeiture not be ordered pursuant to this subdivision for minor or inadvertent violations, as determined by the court.

(d) A judge shall not order the forfeiture of a vehicle under this section if there is a community property interest in the vehicle that is owned by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family that may be operated on the highway with a class A, class B, or class C driver's license.

(e) Any device or apparatus ordered forfeited shall be sold, used, or destroyed by the department.

(f) (1) The proceeds from all sales under this section, after payment of any valid liens on the forfeited property, shall be paid into the Fish and Game Preservation Fund.

(2) A lien in which the lienholder is a conspirator is not a valid lien for purposes of this subdivision.

(g) The provisions in this section authorizing or requiring a judge to order the forfeiture of a device or apparatus also apply to the judge, referee, or juvenile hearing officer in a juvenile court action brought under Section 258 of the Welfare and Institutions Code.

(h) For purposes of this section, a plea of nolo contendere or no contest, or forfeiture of bail, constitutes a conviction.

(i) Neither the disposition of the criminal action other than by conviction nor the discretionary refusal of the judge to order forfeiture upon conviction impairs the right of the department to commence proceedings to order the forfeiture of fish nets or traps pursuant to Section 8630.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2009

Governor